SUPREME COURT, U. S.

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In the Supreme Court

OF THE

United States

OCTOBER TERM [redacted] 1970

No. 215[redacted]

GREYHOUND LINES, INC.,
Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, in and for the County of Shasta,
Respondent,

MARY CHISEFSKI, EDWARD W. HOLLENBECK; JAMES BRIGGS; ZOLA MAYDEN; GARY L. HENRY,
Real Parties in Interest.

PETITION FOR A WRIT OF CERTIORARI to the Court of Appeal of the State of California in and for the Third Appellate District

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to the Court of Appeal of the State of California in and for the Third Appellate District

OPINION BELOW

Petitioner Greyhound Lines, Inc. prays that a writ of certiorari issue to review the order of the Court of Appeal of the State of California, Third Appellate District, denying a writ of prohibition.

The opinion and order are reported at 3 C.A.3d 356 (January 8, 1970). The Supreme Court of the State of California denied without opinion a hearing to review said order on March 4, 1970. (2 C.3d, vol. 10, minutes p. 4 [1970].)

JURISDICTION

The order of the Third Appellate District was entered on January 8, 1970. A hearing was denied by the Supreme Court of the State of California on March 4, 1970. The jurisdiction of this Court is invoked under section 1257(3) of Title 28, United States Code.

QUESTIONS PRESENTED FOR REVIEW

Whether a State court jury can require an interstate passenger motor carrier to install passenger seat belts in its buses, after the federal agency, to which Congress has delegated such regulatory authority, has ruled that such a requirement is unwarranted.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Constitutional provision involved is Article I, Section VIII, Cl. (3).

The Statutes involved are 49 U.S.C. §304 and 49 U.S.C. §1655(e).

STATEMENT OF THE CASE AND PROCEEDINGS BELOW

On September 19, 1964, a bus owned and operated by petitioner Greyhound Lines, Inc. ("Greyhound"), while en route from San Francisco, California, to Vancouver, British Columbia, collided with a truck in Shasta County, California. Five passengers filed actions for personal injuries against Greyhound in the California Superior Court in Shasta County. Each of the complaints alleged that Greyhound was negligent and, in separate causes of action, alleged that Greyhound was negligent in failing to provide a bus "equipped with seat belts or safety harnesses, or with anchors or other devices for securing the same . . .". (R. 89-119.)

Greyhound filed demurrers only to the causes of action based on the failure to provide seat belts on the following grounds:

(1) Congress, by passage of the Interstate Commerce Act Part II (49 U.S.C. §§301-327), vested in the Interstate Commerce Commission the sole and exclusive authority over safety equipment on interstate passenger motor carriers, both as to determining the necessity for such equipment and regulating its use and design.

(2) To permit a multitude of State Court juries acting not only in the State of California but in the fifty States, to determine what safety equipment should be required on interstate passenger motor carriers, will create serious conflicts constituting an unreasonable burden on interstate commerce. (R. 125-168.)

The Superior Court overruled the demurrers on April 4, 1968. (R. 171-175.) Thereafter, Greyhound filed a motion for partial summary judgment, raising the same defenses. (R. 181-315.) The motion was denied on February 21, 1969. (R. 316.)

Greyhound then filed a petition for writ of prohibition in the Court of Appeal of the State of California, Third Appellate District, seeking an order restraining further proceedings in the trial court upon these causes of action. (R. 26-86.) The grounds alleged were the same as those alleged below. After hearing, that court denied the writ in an opinion dated January 8, 1970. (R. 500-506.) Thereafter, the Supreme Court of the State of California denied Greyhound's petition for hearing, based upon the same grounds. (R. 595.)

Review is sought here of the federal questions raised in the courts below.

REASONS FOR ALLOWING THE WRIT

A. THE DECISION BELOW RAISES AN IMPORTANT QUESTION OF LAW AND ADMINISTRATION UNDER THE INTERSTATE COMMERCE ACT.

The California Court of Appeal has ruled that a Superior Court jury may decide whether an interstate passenger motor carrier should be required to install seat belts for bus passengers. Unless this writ is granted, not only the necessity for passenger restraints, but the design of same, will be independently determined by each jury to whom the question is pre-

sented, without regard to prior jury determinations or legislative or administrative decisions on the same subject. The resulting confusion and conflicts, not only within one State, but within the fifty States, will lead to utter chaos.

To prevent this very problem, Congress plainly delegated the authority and responsibility to determine the necessity and design for safety equipment on interstate passenger motor carriers first to the Interstate Commerce Commission, and now, to the Department of Transportation.

Section 204 of the Interstate Commerce Act provides:

> "It shall be the duty of the Commission . . . to regulate common carriers by motor vehicle . . . and to that end the Commission may establish reasonable requirements with respect to . . . safety of operation and equipment." (49 U.S.C. §304 [a] [1].)[1]

Pursuant to that section, the Commission, and later the Department of Transportation, adopted extensive safety regulations for motor carriers. 49 C.F.R. Parts 390 et seq.

By order served June 1, 1966, the Commission instituted a proceeding to which Greyhound was made a party Respondent, to determine whether interstate motor carriers including Greyhound, should be required to install seat belts in their buses. (R. 319.)

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[1]The duties of the Commission under this provision were transferred to the Department of Transportation in 1966. 49 U.S.C. §1655(e).

In its order, the Commission posed numerous questions relating to the problems and implications of installing seat belts in buses and invited the comment of all motor carriers made parties to the proceeding. Among these questions was whether existing regulations of the Commission governing standees and aisles seat should be modified if seat belts were required. (R. 229.)

On June 20, 1969, after reviewing the responses received in the course of the investigation, the Commission's successor, the Department of Transportation, issued a notice in which it announced its determination that installation of seat belts in buses would not be required. It stated:

> "Responses to Ex Parte No. MC-69, as well as other available data in this area have been carefully studied. Because of certain operational problems, the structural limitations of existing buses, and studies currently being made by the National Highway Safety Bureau relating to safety performance requirements of buses to be built in the future, the Administrator does not at this time propose to require installation of seat belt assemblies and anchorages for passenger seats in intercity buses." (Fed. Reg. June 28, 1969.)

It is obvious from the foregoing that the installation of seat belts in buses is a substantially different matter from installation of seat belts in passenger cars.[2] Operational problems (such as, maintaining

[2]The difference is dramatically illustrated by the proposed rules recently issued by the Department of Transportation on May 5, 1970. (Fed. Reg. May 7, 1970.) After nearly one year

clear aisles, providing emergency exits, establishing appropriate standards, and providing for an orderly program of installation) structural limitations of buses (such as their capacity to provide seat belt anchorages of sufficient strength) and the accommodation of existing safety regulations governing buses, make the determination one for an agency equipped with the necessary expertise and with the power to implement a reasonable and uniform program for compliance.

To permit that determination to be made by local juries in a hit or miss fashion, without the needed expertise to weigh all of the relevant technical and regulatory factors, flies in the face of the underlying concept of the Federal Act and regulatory scheme. Surely Congress did not intend to have local juries haphazardly impose on interstate carriers an equipment requirement which the appropriate federal agency, after lengthy deliberation, declined to impose. Indeed, from the inception of regulation under the Act, this Court has held that all matters, entrusted to the Commission, such as safety equipment, shall be governed by uniform rules, not by the vagaries of local decisions:

> "As it has often been said, the statutory provisions manifest the intent of Congress that the obligation of the carrier with respect to the services within the purview of the statute shall be

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of further study and analysis, the Department proposed extensive rules relating to seat belts and other types of passenger restraint systems for passenger cars, trucks and multipurpose passenger vehicles. With respect to buses, however, the Department proposed only that seat belts be installed for the driver.

governed by uniform rule in the place of the diverse requirements of state legislation and decisions." *Southern Ry. v. Prescott*, 240 U.S. 632, 639-640 (1916) (per Mr. Justice Hughes).

The question here does not concern requirements relating to the use of local highways, such as speed limits or the sizes and weights of motor vehicles, which Congress has expressly reserved from federal regulation and left to the states. *Maurer v. Hamilton*, 309 U.S. 598, 607 (1940). It does not even concern the State's authority to exercise its police power and to adopt by legislation or rule making, non-discriminatory safety regulations which do not burden commerce. Cf. *Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1958).

The question before this Court is whether State court juries should be permitted to require the installation and use of an item of safety equipment which the appropriate federal agency has determined to be unnecessary.[3]

Congress has legislated on this very subject and has charged the Department of Transportation with the duty to make such determination. This expert body, after studying the matter for three years, concluded that seat belts are not warranted.[4]

[3]The issues of negligence within the jury's competence remain to be tried and hence there is no problem here of depriving plaintiffs of any rights they may have to recover for their injuries.

[4]Nor, to our knowledge, has a single State legislature or regulatory agency decided to require seat belts on passenger buses. In California, for example, §27309 of the Vehicle Code, enacted in 1963, required the installation of seat belts in certain ve-

Now to permit a jury to overrule the Department of Transportation is at war with the language and purpose of the Act. It defies rational principles of administration of the Act and invites blatant conflict and confusion.

A jury verdict cannot possibly create a standard which will permit uniform administration and compliance. Neither Greyhound, nor any other interstate motor carrier will know what kind of passenger restraint system to install on their buses operating in California or elsewhere. In the absence of any uniform standards, the approaches taken by the various carriers could easily vary and be inconsistent.

The situation is further complicated by the fact that the Department of Transportation is still actively investigating passenger restraint systems on all motor vehicles including buses. Although the Department has decided that seat belts are not the solution for buses, it may at some future date require the use of some other passenger restraint system such as air bags.[5] Clearly, this case presents one of those matters where

> ". . . the enquiry is essentially one of fact and of discretion in technical matters; and uniformity can be secured only if its determination is left to the Commission. Moreover, that determination is reached ordinarily upon voluminous and conflicting evidence, for the adequate appreciation of

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hicles sold in California after 1964, but did not apply to buses. (The statute was repealed in 1968, following the creation of the Department of Transportation.) Assembly Bill No. 70 sought to require the installation of seat belts on buses but was defeated. (R. 404.)

[5]See proposed Motor Vehicle Safety Standards, Federal Register, May 7, 1970.

which acquaintance with many intricate facts of transportation is indispensable; and such acquaintance is commonly to be found only in a body of experts." *Gt. No. Ry. v. Merchants Elev. Co.*, 259 U.S. 285, 291 (1921) (per Mr. Justice Brandeis).

B. THE DECISION BELOW IS IN CONFLICT WITH DECISIONS OF THIS COURT.

In the leading case of *Napier v. Atlantic Coast Line*, 272 U.S. 605 (1926), this Court, speaking through Mr. Justice Brandeis, held that Congress, by enacting the amended Boiler Inspection Act, had occupied the field of requiring safety devices on locomotives. The relevant provisions empowered the Interstate Commerce Commission to prescribe rules and regulations which all locomotives used by carriers were required to meet. This Court held that when Congress gave the Commission broad power to impose requirements with respect to the safety of locomotives, it precluded State regulation on the same subject even though the Commission might not have required the use of a particular safety device sought to be required by the State.

There is no difference in substance between the power vested in the Commission by the Boiler Inspection Act and that arising under Section 304(a) of the Interstate Commerce Act. Under that section, the Commission has the *duty* to regulate and the unrestricted *power* to establish requirements with respect to safety of operation and equipment.

As heretofore pointed out, this Court need not concern itself here with the permissible scope of exercise

of State police power. But certainly the *Napier* decision makes clear that there is no room in the federal regulatory system for State juries to impose arbitrary and non-uniform equipment requirements on interstate carriers.

The decision of the court below likewise conflicts with the decisions of this Court in *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945) and *Bibb v. Navajo Freight Lines*. In those cases, local regulations which burdened interstate commerce and were of doubtful efficacy as safety measures were held unconstitutional.

The burden on interstate commerce in prospect here is every bit as heavy as that involved in the *Southern Pacific* and *Bibb* cases. Buses will have to be withdrawn from service and a plethora of seat belts purchased and installed. In addition, the buses may have to be restructured and redesigned in order to accommodate seat belts and anchorages. But even if these problems are surmounted, there remains the prospect that Greyhound, like the carriers in the cited cases, may be exposed to conflicting regulation.

"It is entirely possible that one California jury might find the absence of seat belts in buses to be unsafe and negligent, while another jury in California might find the installation of seat belts in buses, restricting passenger mobility, to be unsafe and negligent. On the other hand, a jury in another State might find that Greyhound should install an entirely different system of passenger restraint, such as the air

bags now under active consideration by the Department of Transportation.[6]

Full compliance with these possibly conflicting duties imposed by jury verdicts would force petitioner, on every occasion when its buses crossed state lines, to (1) completely remove all seat belts previously installed, or (2) remove the previously installed seat belts and replace them with a different restraining device, or (3) exchange buses. Each of the alternatives would be enormously expensive and would severely delay the travelling public. See *Morgan v. Commonwealth of Virginia*, 328 U.S. 373 (1964).

Moreover, it would be far more difficult to justify the burden involved here as a necessary safety measure than it was to justify the burden in the *Southern Pacific* and *Navajo* cases. The regulations in those cases were enacted by State legislatures and, as such, were entitled to presumptive validity as necessary safety measures. (359 U.S. 529 at p. 424.) A determination made by a State jury composed of laymen without thorough consideration of all relevant technical factors has never been held to be entitled to such respect. Nor is there any evidence that a State jury determination requiring seat belts in buses would produce an increased measure of safety on State roads and highways. Indeed, the decision of the Department of Transportation, made after three years of study, *not* to require seat belts in buses, and the fact that no other legislature or regulatory commission has

[6]See proposed Mofor Vehicle Safety Standards, Federal Register, May 7, 1970.

ever required them in buses, constitutes strong evidence to the contrary.

The question raised in this case has broad implications. With the growing concern over safety, coupled with increasing litigation on the subject, there is a need to define the proper role of juries in determining the kinds of safety equipment to be required on interstate regulated carriers. In the absence of some such definition, the federal scheme for regulating such carriers is threatened with serious conflict and confusion.

CONCLUSION

In view of the national importance of the questions presented above, this petition for a writ of certiorari should be granted.

Dated, San Francisco, California,
May 25, 1970.

Respectfully submitted,
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(Appendices Follow)

Appendix A

United States Constitution, Art. I § 8, cl. 3:

Regulation of Commerce.

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

49 USC § 304:

§ 304. Powers and duties of Commission—Powers and duties generally

(a) It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment.

In the event such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of subsection (c) of this section and sections 305, 320, 321, 322(a), (b), (d), (f), and (g), and 324 of this title.

(3a) Notwithstanding any other provision of section 303(b) of this title, to establish for carriers of migrant workers by motor vehicle reasonable requirements with respect to comfort of passengers, qualifications and maximum hours of service of operators, and safety of operation and equipment. Such requirements shall apply to any such carrier only in the case of transportation of any migrant worker for a total distance of more than seventy-five miles, and then only if such transportation is across the boundary line of any State, the District of Columbia, or Territory of the United States, or a foreign country. When such requirements are established, the term "motor carrier" shall be construed to include carriers of migrant workers by motor vehicle in the administration of subsection (c) of this section and sections 305, 320, 321, 322(a), (b), (d), (f) and (g), and 324 of this title.

(4) To regulate brokers as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to licensing, financial responsibility, accounts, records, reports, operations, and practices of any such person or persons.

(4a) To determine, upon its own motion, or upon application by a motor carrier, a State board, or any

other party in interest, whether the transportation in interstate or foreign commerce performed by any motor carrier or class of motor carriers lawfully engaged in operation solely within a single State is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy declared in this Act. Upon so finding, the Commission shall issue a certificate of exemption to such motor carrier or class of motor carriers which, during the period such certificate shall remain effective and unrevoked, shall exempt such carrier or class of motor carriers from compliance with the provisions of this chapter, and shall attach to such certificate such reasonable terms and conditions as the public interest may require. At any time after the issuance of any such certificate of exemption, the Commission may by order revoke all or any part thereof, if it shall find that the transportation in interstate or foreign commerce performed by the carrier or class of carriers designated in such certificate shall be, or shall have become, or is reasonably likely to become, of such nature, character, or quantity as in fact substantially to affect or impair uniform regulation by the Commission of interstate or foreign transportation by motor carriers in effectuating the national transportation policy declared in this Act. Upon revocation of any such certificate, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the

authority, if any, to operate in interstate or foreign commerce held by such carrier or carriers at the time the certificate of exemption pertaining to such carrier or carriers became effective. No certificate of exemption shall be denied, and no order of revocation shall be issued, under this subparagraph, except after reasonable opportunity for hearing to interested parties. Where an application is made in good faith for the exemption of a motor carrier under this subparagraph, accompanied by a certificate of a State board of the State in which the operations of such carrier are carried on stating that in the opinion of such board such carrier is entitled to a certificate of exemption under this subparagraph, such carrier shall be exempt from the provisions of this chapter beginning with the sixtieth day following the making of such application to the Commission unless prior to such time the Commission shall have by order denied such application, and such exemption shall be effective until such time as the Commission, after such sixtieth day, may by order deny such application or may by order revoke all or any part thereof as hereinbefore authorized. In any case where a motor carrier has become exempt from the provisions of this chapter as provided in this subparagraph, it shall not be considered to be a burden on interstate or foreign commerce for a State to regulate such carrier with respect to the operations covered by such exemption. Applications under this subparagraph shall be made in writing to the Commission, verified under oath, and shall be in such form and contain such information as the Commission shall by regulations require.

(5) For the purpose of carrying out the provisions pertaining to safety, the Commission may avail itself of the assistance of any of the several research agencies of the Federal Government having special knowledge of any such matter, to conduct such scientific and technical researches, investigations, and tests as may be necessary to promote the safety of operation and equipment of motor vehicles as provided in this chapter; the Commission may transfer to such agency or agencies such funds as may be necessary and available to make this provision effective.

(6) To administer, execute, and enforce all provisions of this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration; and

(7) For purposes of the administration of the provisions of this chapter, to inquire into the management of the business of motor carriers and brokers, and into the management of the business of persons controlling, controlled by, or under common control with, motor carriers to the extent that the business of such persons is related to the management of the business of one or more motor carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this chapter; and may transmit to Congress from time to time, such recommendations (including recommendations as to additional legislation) as the Commission may deem necessary.

Classification of motor carriers

(b) The Commission may from time to time establish such just and reasonable classifications of brokers or of groups of carriers included in the term "common carrier by motor vehicle", or "contract carrier by motor vehicle", as the special nature of the services performed by such carriers or brokers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this chapter, to be observed by the carriers or brokers so classified or grouped, as the Commission deems necessary or desirable in the public interest.

Investigation of complaints; orders

(c) Upon complaint in writing to the Commission by any person, State board, organization, or body politic, or upon its own initiative without complaint, the Commission may investigate whether any motor carrier or broker has failed to comply with any provision of this chapter, or with any requirement established pursuant thereto. If the Commission, after notice and hearing, finds upon any such investigation that the motor carrier or broker has failed to comply with any such provision or requirement, the Commission shall issue an appropriate order to compel the carrier or broker to comply therewith. Whenever the Commission is of opinion that any complaint does not state reasonable grounds for investigation and action on its part, it may dismiss such complaint.

Application of sections 14 and 16(13) of this title

(d) The provisions of sections 14 and 16(13) of this title, relating to reports, decisions, schedules, contracts, and other public records, shall apply in the administration of this chapter.

Regulations governing use of vehicles owned by others

(e) Subject to the provisions of subsection (f) of this section, the Commission is authorized to prescribe, with respect to the use by motor carriers (under leases, contracts, or other arrangements) of motor vehicles not owned by them, in the furnishing of transportation of property—

(1) regulations requiring that any such lease, contract, or other arrangement shall be in writing and be signed by the parties thereto, shall specify the period during which it is to be in effect, and shall specify the compensation to be paid by the motor carrier, and requiring that during the entire period of any such lease, contract, or other arrangement a copy thereof shall be carried in each motor vehicle covered thereby; and

(2) such other regulations as may be reasonably necessary in order to assure that while motor vehicles are being so used the motor carriers will have full direction and control of such vehicles and will be fully responsible for the operation thereof in accordance with applicable law and regulations, as if they were the owners of such

vehicles, including the requirements prescribed by or under the provisions of this chapter with respect to safety of operation and equipment and inspection thereof, which requirements may include but shall not be limited to promulgation of regulations requiring liability and cargo insurance covering all such equipment.

Exceptions to regulations for use of vehicles owned by others

(f) Nothing in this chapter shall be construed to authorize the Commission to regulate the duration of any such lease, contract or other arrangement for the use of any motor vehicle, with driver, or the amount of compensation to be paid for such use—

(1) where the motor vehicle so to be used is that of a farmer or of a cooperative association or a federation of cooperative associations, as specified in section 303(b) (4a) or (5) of this title, or is that of a private carrier of property by motor vehicle as defined in section 303(a) (17) of this title and is used regularly in the transportation of property of a character embraced within section 303(b) (6) of this title or perishable products manufactured from perishable property of a character embraced within section 303(b) (6) of this title, and such motor vehicle is to be used by the motor carrier in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based; or

(2) where the motor vehicle so to be used is one which has completed a movement covered by section 303(b) (6) of this title and such motor vehicle is next to be used by the motor carrier in a loaded movement in any direction, and/or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based.

Feb. 4, 1887, c. 104, Pt. II, § 204, as added Aug. 9, 1935, c. 498, 49 Stat. 546, and amended June 29, 1938, c. 811, § 4, 52 Stat. 1237; Sept. 18, 1940, c. 722, Title I, §§ 19, 20(a, b), 54 Stat. 921, 922; Mar. 27, 1942, 3 p.m., E.W.T., c. 199, Title I, § 101, 56 Stat. 176; Aug. 3, 1956, c. 905, § 2, 70 Stat. 958; Aug. 3, 1956, c. 928, 70 Stat. 983.

49 USC § 1655(e)

Interstate Commerce Commission; functions, powers and duties relating to safety appliances and equipment on railroad engines and cars, protection of employees and travelers, hours of service, medals for heroism, explosives and other dangerous articles, standard time zones and daylight saving time; safety of operation and equipment.

(e) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Interstate Commerce Commission, and of the Chairman, members, officers, and offices thereof, under—

(1) the following laws relating generally to safety appliances and equipment on railroad engines and cars, and protection of employees and travelers:

(A) The Act of March 2, 1893, as amended.

(B) The Act of March 2, 1903, as amended.

(C) The Act of April 14, 1910, as amended.

(D) The Act of May 30, 1908, as amended.

(E) The Act of February 17, 1911, as amended.

(F) The Act of March 4, 1915, as amended.

(G) Reorganization Plan No. 3 of 1965.

(H) Joint Resolution of June 30, 1906, as amended.

(I) The Act of May 27, 1908, as amended.

(J) The Act of March 4, 1909, as amended.

(K) The Act of May 6, 1910, as amended.

(2) The following law relating generally to hours of service of employees: The Act of March 4, 1907, as amended.

(3) The following law relating generally to medals for heroism: The Act of February 23, 1905, as amended.

(4) The following provisions of law relating generally to explosives and other dangerous articles: Sections 831-835 of Title 18.

(5) The following laws relating generally to standard time zones and daylight saving time:

(A) The Act of March 19, 1918, as amended.

(B) The Act of March 4, 1921, as amended.

(C) The Uniform Time Act of 1966, as amended.

(6) The following provisions of the Interstate Commerce Act, as amended—

(A) relating generally to safety appliances methods and systems: Section 25.

(B) relating generally to investigation of motor vehicle sizes, weights, and service of employees: Section 226.

(C) relating generally to qualifications and maximum hours of service of employees and safety of operation and equipment: Sections 204(a) (1) and (2), to the extent that they relate to qualifications and maximum hours of service of employees and safety of operation and equipment; and sections 204(a) (3), (3a), and (5).

(D) to the extent they relate to private carriers of property by motor vehicle and carriers of migrant workers by motor vehicle other than contract carriers: Sections 221(a), 221(c), and 224.

Appendix B

In The Court of Appeal
State of California
Third Appellate District
(Shasta)

3 Civil No. 12303

Greyhound Lines, Inc.,
Petitioner,

vs.

The Superior Court of the State of California, in and for the County of Shasta,
Respondent,

and

Mary Chisefski, Edward W. Hollenbeck, James Briggs, Zola Mayden and Gary L. Henry,
Real Parties in Interest.

OPINION

In September 1964, a certain 1962 GMC passenger bus owned by petitioner Greyhound Lines, Inc., while enroute from San Francisco to Vancouver, British Columbia, was involved in a collision with a truck in Shasta County, California. Five persons, passengers in the bus, filed actions for personal injuries against petitioner in the Shasta County Superior Court alleging in their complaints that the defendants' were

negligent in their ownership, operation and maintenance of the two vehicles involved in the accident. In addition, plaintiffs alleged in separate causes of action that Greyhound was negligent in failing to equip its bus with passenger seat belts.

Thereafter, Greyhound demurred to those causes of action in each of the complaints which alleged that Greyhound was negligent in failing to equip its bus with passenger seat belts. All demurrers were identical, and were filed on the ground that the court lacked jurisdiction over this particular subject matter.

Greyhound's demurrers to the Shasta County actions were overruled.[2]

Greyhound subsequently answered the Shasta County complaints and filed a motion for partial summary judgment directed to those causes of action in the complaints alleging that Greyhound was negligent in failing to equip its bus with passenger seat belts. Greyhound's motion was denied and the cases have now been consolidated for trial.

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[1]In addition to petitioner, the Greyhound bus driver, the driver of the other vehicle, and other parties were named as defendants.

[2]Another passenger aboard the bus filed an action in the San Francisco County Superior Court for damages for personal injuries arising out of the accident. That person also alleged, *inter alia*, that Greyhound was negligent in failing to equip its bus with passenger seat belts.

Thereafter, Greyhound demurred to that cause of action in the complaint which alleged that Greyhound was negligent in failing to equip its bus with passenger seat belts.

On March 15, 1965, the San Francisco Superior Court sustained Greyhound's demurrer without leave to amend. Said demurrer was sustained on the basis that the federal government has preempted the area of regulation of safety equipment on interstate passenger motor carriers.

By this petition for an alternative writ of prohibition petitioner asks this court to direct the Shasta County Superior Court to desist and refrain from any further proceedings in those causes of action which allege petitioner was negligent in failing to equip its bus with passenger seat belts.

The issue here is whether it is a question for the trier of fact to determine if petitioner was negligent in failing to so equip its passenger bus. Greyhound's basic contention is that, as a matter of public policy, the installation of safety belts on passenger stages should be a matter for legislative or administrative determination and not be subject to the varying determinations of juries in individual cases.

It is now a matter of common knowledge that safety belts are effective in reducing fatalities and minimizing injuries in motor vehicle collisions. (Mortensen v. Southern Pacific Co. (1966) 245 Cal.App.2d 241, 243; 38 So.Cal.L.Rev. (1965) 733; 19 Univ.Fla. L.Rev. (1967) 635; 35 Ins. Counsel J. 432 (July 1968); 34 Ins. Counsel J. 349 (July 1967); Message From The President Of The United States, Transmitting The Second Annual Report On The Administration Of The Highway Safety Act of 1966, Pursuant To The Provisions Of Section 202 Of That Act, 91st Congress, 1st Session, Document No. 90-109, April 29, 1969, pp. 3, 4, 16, 18.)[3] In this connection we note that

[3]This report commences its tragic recitation as follows:

"Death on the nation's highways hit an all time high in 1968, when an estimated 55,500 people died in motor vehicle crashes.

"

"The dimensions of the problem extend beyond the death and injury totals, for each American family also suffered an

as early as 1889 the California Supreme Court declared that carriers must keep pace with science and art and modern improvement in their application to the carriage of passengers. (Treadwell v. Whittier (1889) 80 Cal. 574, 592, 600.)

---

average financial loss estimated at $291 as a result of highway crashes in 1968—a total loss of almost $15 billion." (P. 3.)

"SPEED AND CRASH SURVIVABILITY

"While the use of alcohol undoubtedly has emerged as a dominant, if not the primary, factor contributing to the causation of crashes, the vehicle is the dominant factor determining the severity of bodily injuries once a crash occurs. Its structural strength, interior padding, its seat belts and shoulder harnesses (when worn by the occupants), the placement of knobs and projections on the instrument panel undoubtedly determine crash survivability. Research data pinpointing dangerous interior features of an unprotected vehicle are shown in Table 2. The highest rates of potentially fatal injuries occur to both passengers and drivers when their heads or chests impact the steering assembly, instrument panel or windshield. Without the protection of proper 'packaging' a rider in a crash continues moving at the pre-crash speed of the vehicle and, consequently, hits some part of the vehicle at this speed." (P. 4.)

"SAFETY BELTS

"There is abundant evidence that the use of safety belts provides a sizeable improvement in safety, both in preventing death and limiting injuries." (P. 16.)

"Specific examples of seat belt effectiveness are available. Data reported by Florida and Nebraska for the period 1965 through 1967, indicate that the death rate per crash was 56 percent higher when occupants did not wear belts. These estimated savings in lives were obtained primarily with the simple lap belt design. The combination lap and upper torso restraint now required by the Federal standard had demonstrated an even higher potential for preventing death and injury. As reported last year, a study in Sweden of 28,000 crashes involving over 37,000 unbelted and belted front seat occupants by N. I. Bohlin revealed that restraints of this type produced reductions of about 30 percent for minor injuries and 80 percent for those of fatal severity. Non-belted occupants sustained fatal injuries at speeds as low as 12 m.p.h., while *none* of the belted occupants was fatally injured at crash speeds as high as 60 m.p.h.

"These data suggest that perhaps 8,000 lives could have been saved in crashes last year if combination lap and shoulder belts were installed and used in every car." (P. 18.)

In California the standard of care imposed on passenger carriers is statutory, i.e., that of utmost care and diligence. In this connection, we note that sections 2100 and 2101 of the Civil Code provide as follows:

"2100. A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill."

"2101. A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care."

The California cases also take cognizance of the rule that the duty of care owed to a passenger by a common carrier includes the use of the utmost care and diligence for his safe carriage. (McBride v. Atchison, Topeka & S.F. Ry. Co. (1955) 44 Cal.2d 113, 115-116; Gray v. City & County of San Francisco (1962) 202 Cal.App.2d 319, 323.)

Our attention has not been drawn to any precedent regarding a mandatory provision for the furnishing of safety belts by common carriers. Nevertheless, where the evidence is such that reasonable men might fairly differ as to the answer to the question posed, the issue is one of fact for the jury to determine. (See Polk v. City of Los Angeles (1945) 26 Cal.2d 519, 528.) As stated in Toschi v. Christian, (1944) 24 Cal.2d 354, 360: "In other words, the actor's conduct must always be gauged in relation to all the other

material circumstances surrounding it and if such other circumstances admit of a reasonable doubt as to whether such questioned conduct falls within or without the bounds of ordinary care then such doubt must be resolved as a matter of fact rather than of law."

Since we are here unhampered by any controlling federal law or regulation, we conclude that under current California decisional law it is for the jury to decide whether the carrier's failure to provide seat belts amounted to negligence. (See Mortensen v. Southern Pacific Co., supra, 245 Cal.App.2d 241; Truman v. Vargas (1969) 275 A.C.A. 1105.) The toll of highway injury and death is such that judicial policy should be against deferment to legislative inaction and in favor of having juries pass upon the question until such time as the Legislature may choose to adopt supervising safety regulations.

Petitioner urges at great length that the state courts have no legitimate concern in this area. Although petitioner lists and argues several contentions, its most serious seem to be that the federal government (or, more precisely, the Interstate Commerce Commission) has preempted the field and that any state action in this regard would impose an unconstitutional burden on interstate commerce. Petitioner cites many cases concerning state laws or regulations and their impact on interstate commerce. The cases cited are not analogous to the situation presented here and serve merely to becloud the issue.[4] There is here

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[4]Greyhound has cited Robinson v. Lewis (Or., 1969) 457 P.2d 483, as support for its position. That case held, *inter alia*, that there is no common law duty to wear seat belts in ordinary ve-

no violation of statute or regulation. Indeed, there is no statute or regulation. We think the arguments of petitioner miss the mark.

The writ is denied. The order to show cause is discharged.

Regan, J.

We concur:

Friedman, Acting P. J.

Janes, J.

Filed January 8, 1970,
Wilfried J. Kramer, Clerk.

---

hicular travel. The Oregon court also held that the task of investigating and testing utility of safety devices and of determining when their use should be made mandatory can best be performed by the legislature. But we are not here concerned with *compelling* passengers to fasten their safety belts; rather, we are concerned with whether Greyhound should have made safety belts *available* to its passengers in light of the present knowledge that such devices reduce fatalities and minimize injuries.

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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

No. 215

GREYHOUND LINES, INC., *Petitioner*

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, in and for the County of Shasta, *Respondent*

MARY CHISEFSKI, EDWARD W. HOLLENBECK; JAMES BRIGGS; ZOLA MAYDEN; GARY L. HENRY, *Real Parties in Interest*

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The National Association of Motor Bus Owners ("NAMBO") hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of the attorney for the petitioner has been obtained. The consent of the attorney for the respondent was requested but refused.

The interest of NAMBO arises from the fact that it is the national trade association for intercity motor bus carriers of passengers. Its members include the petitioner Greyhound Lines, Inc.; the National Trailways System; and hundreds of other motor carriers of passengers authorized by the Interstate Commerce Commission to operate in interstate commerce.

In its capacity as representative of the industry NAMBO has participated in proceedings before the

Interstate Commerce Commission and agencies of the Department of Transportation dealing with the question whether seat belts should be required for buses operated by interstate motor carriers of passengers. The results of such proceedings are important to the Court's disposition of the petition for a writ of certiorari in this case.

The nature of these Federal regulatory proceedings shows that the question of seat belts for intercity buses is a highly technical one that requires the expert technological and regulatory judgments of the agencies established by Congress for the purpose. It is not appropriate for state court jury determination.

The brief submitted by NAMBO apprises the Court of these matters without being cumulative of the petition for a writ of certiorari. It presents *additional* facts and argument related to NAMBO's interest in uniform regulation by Federal regulatory agencies created by Congress to determine the very question the Courts below would submit to a state court jury. The brief *amicus curiae* is needed to inform the Court more fully on the questions presented for decision and, if accepted, its argument would be dispositive of this case.

Respectfully submitted,

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Real Parties in Interest

BRIEF AMICUS CURIAE

The Interest of the Amicus Curiae

The National Association of Motor Bus Owners ("NAMBO") supports the petition for a writ of certiorari. It is the national trade association for the intercity motor bus industry. Its members include the petitioner Greyhound Lines, Inc., the National Trailways System and hundreds of other motor carriers of passengers. Its members are authorized by the Interstate Commerce Commission to engage in the transportation of passengers and their baggage by motor bus in interstate commerce.

As the representative of the intercity motor bus industry, NAMBO participated in proceedings under the Interstate Commerce Act and the National Traffic

and Motor Vehicle Safety Act of 1966 which had as their purpose determination of the question whether seat belts should be required in intercity motor coaches. Those proceedings would be nullified by the decisions of the Courts below.

A description of such proceedings reveals that the question whether seat belts should be required is highly technical, calling for evaluation of technological and regulatory matters which have been committed by Congress to agencies with the necessary expertise to deal with them adequately. They are not appropriate for determination by state court juries. Moreover, state court determinations would destroy the uniformity of regulation intended by Congress in establishing regulatory agencies for this purpose.

These questions have national significance and concern all of the members of NAMBO. It is this interest which has caused NAMBO to file this brief. The brief adopts the petition for a writ of certiorari, but does not repeat what is contained in the petition. It is limited to a discussion of the Federal regulatory proceedings in which NAMBO has participated on the question whether seat belts should be required in intercity motor coaches.

Whether Seat Belts Are Required for Passengers in Intercity Buses Is the Subject of Federal Regulation and the Expert Judgments Needed Are Not Suited to State Court Jury Determinations

The Federal Government entered the field of seat belt regulation as early as 1963. In that year Congress adopted legislation which became P.L. 88-201, approved December 13, 1963 (77 Stat. 361). That law directed the issuance of standards "to provide the

public with safe seat belts so that passenger injuries in motor vehicle accidents can be kept to a minimum." Standards were issued pursuant to the law on July 1, 1965 (30 F.R. 8432). Significantly they applied only to passenger cars and expressly excluded "carriers subject to safety regulations under Part II of the Interstate Commerce Act." (See, 30 F.R. 8432, Section 9.1(c)).* The law was repealed with the adoption of more comprehensive safety legislation in 1966 (P.L. 89-563, Title I, Section 117(a), Sept. 9, 1966, 80 Stat. 727).

There are two principal sources of Federal regulation in this field. One is Section 204 of the Interstate Commerce Act, 49 U.S.C. 304(a)(1), which authorizes the Interstate Commerce Commission to "establish reasonable requirements with respect to . . . safety of operation and equipment."** The other is the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1381 *et seq.*, which directs the Department of Transportation to issue vehicle safety standards for all types of motor vehicles, including commercial buses.***

Not a one of these statutes has been applied to passenger seats of commercial buses. Proceedings for this

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* All members of NAMBO are carriers subject to safety regulations under Part II of the Interstate Commerce Act. This includes petitioner Greyhound Lines, Inc.

** These powers were transferred to the new Department of Transportation in 1966. 49 U.S.C. 1655(e).

*** The legislation applied originally to the Secretary of Commerce. It was transferred to the Department of Transportation when that Department was first established. 49 U.S.C. 1655(a)(6). In the Department the responsible agency is the National Highway Safety Bureau in the Federal Highway Administration.

purpose were instituted under Section 204 of the Interstate Commerce Act and under the National Traffic and Motor Vehicle Safety Act of 1966. NAMBO participated in the proceedings. Under both it has been determined that seat belts in passenger seats of commercial carriers should not be required.

The first of these proceedings was commenced on June 1, 1966 by the Interstate Commerce Commission in its Docket Ex Parte No. MC-69 (31 F.R. 7911). The proceeding was based upon Section 204(a)(1) of the Interstate Commerce Act. Its stated purpose was "to inquire into the operations of motor carriers of passengers in order to determine whether it is necessary or desirable to adopt regulations and establish standards which would require such carriers to install, provide, and maintain seat belts for the use of passengers and drivers . . ." (*Ibid.*).

Part of the evidence submitted to the Commission was the report of a test of the use of seat belts on the buses of Virginia Stage Lines, a commercial carrier subject to the jurisdiction of the Commission, from February 17 through March 13, 1965. The test was conducted by the Safety Committee of NAMBO in cooperation with the ICC. A copy of the report as submitted to the Commission is attached hereto as Appendix A.

Concluding that additional study is necessary before determining whether seat belts should be required for intercity coaches, the report points out the inapplicability of seat belt experience in automobiles to heavy intercity buses, as follows:

> . . . there is a vast difference between automobiles and intercity coaches, particularly where they may

be involved in collision situations. The desirability of the installation and use of seat belts in automobiles is not questioned here; on the contrary, it is strongly supported. But the widespread campaign to encourage their use runs the risk of fostering an impression on the part of the public that the same principles are applicable to integral-type intercity coaches. There is little or no evidence to support such an assumption and there are, in fact, substantial indications to the contrary.

The experiment conducted by General Motors in which a modern coach was crashed against a concrete wall at 25 miles per hour substantiates the existence of basic differences. For example, this crash produced a maximum seat-belt loop load on the instrumented anthropomorphic dummies of approximately 1,200 pounds; other crash research indicates that the seat-belt load in a passenger car under similar conditions produced a load of 2,700 pounds or more.

The difference here is explained by the fact that, in the case of the bus, very substantial proportions of the kinetic energy produced by the impact were absorbed by the crushing of the front of the coach to the extent that its total length was reduced by 42 inches. This is a basic engineering principle in integral-type coach design. In this collision, instruments showed a force of 29 G's at the point of impact and 9 G's at seat positions. No comparable result occurs in the case of an automobile. (App. B, pp. 1-2).

The report refers to a study of seat belt installations in school buses which was about to get underway at that time at the Institute of Traffic and Engineering Research at the University of California, stating that:

This project, financed by grants from the U.S. Public Health Service and the Allied Chemical

> Corporation, is to be administered by the National Safety Council and is designed to arrive at sound conclusions with the use of instrumented anthropomorphic dummies in controlled rear-end, side and front collisions and roll-over test. Highly sophisticated techniques will be used including high-speed photography and automatic recording systems.
>
> It is conceded that there are differences in the design and construction of school buses, particularly the body-on-chassis type, and the typical intercity coach. There are, however, many similarities and it is the view of the NAMBO Safety Committee that any decision as to the installation of seat belts in common-carrier buses should await the findings in this University of California study.*

This is merely a sample of the kind of technical evidence that was part of the record in Ex Parte No. MC-69. On the basis of such evidence, the Federal Highway Administration of the Department of Transportation (the agency succeeding to the Interstate Commerce Commission's safety powers which were transferred to the Department), concluded in a notice of proposed rule making issued June 20, 1969, that:

> Because of certain operational problems, the structural limitations of existing buses, and studies currently being made by the National Highway

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* The results of the study were released in 1967: School Bus Passenger Protection (Derwyn M. Severy, Harrison M. Brink and Jack D. Baird, Institute of Transportation and Traffic Engineering, University of California, Los Angeles), Society of Automotive Engineers, Automotive Engineering Congress, Detroit, Michigan, January 9-13, 1967, Document No. 670040. The authors recommended regulatory standards requiring seat belts for drivers of school buses but not for passengers of such buses.

> Safety Bureau relating to safety performance requirements of buses to be built in the future, the Administrator does not at this time propose to require installation of seat belt assemblies and anchorages for passenger seats in intercity buses. 34 F.R. 9999.

This proposal was made final on June 24, 1970, when the Administrator of FHA issued regulations for seat belts for drivers but not for passengers of intercity coaches (35 F.R. 10859-10861). The regulations were made effective August 1, 1970. The publication of the regulations included the announcement that "in consideration of the foregoing, proceedings in Ex Parte No. MC-69 are discontinued."*

The Federal regulatory agency responsible for safety regulations under the Interstate Commerce Act has thus determined that seat belts for passengers shall not be required and that the *proceedings for that purpose shall be discontinued.* A similar result has been reached by the National Highway Safety Bureau of the Department of Transportation under the National Traffic and Motor Vehicle Safety Act of 1966. On May 5, 1970, that agency issued its notice of proposed motor vehicle safety standard which requires seat belts for passenger cars, trucks and the drivers of buses (35 F.R. 7187-7189). It follows the Federal Highway Administration in not finding a requirement for seat belts for passengers of buses.

These proceedings show, first of all, that the Federal Government has entered the field of regulation of seat belt requirements for intercity passenger buses and

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*The final regulations had not been issued at the time the petition for certiorari was filed and the proceedings in Ex Parte No. MC-69 had not then been discontinued.

that it has found a requirement for seat belts not warranted. They show, secondly, that whether seat belts should be required in commercial carrier vehicles is a highly technical matter involving scientific evaluation and expert regulatory judgments. It is not the kind of a determination which either ought to be left to diverse lay juries or can legally be committed to such juries without doing violence to an established scheme of Federal regulation.

Conclusion

The question whether seat belts should be provided for passengers in intercity motor buses can not be relegated to the determination of a state court jury. The question is highly technical in nature, involving expert judgment on regulatory as well as technical matters. Moreover, Congress has legislated on the subject and responsible agencies charged with administration of the laws adopted by Congress have determined that seat belts for passengers in intercity buses are not required. The decision below conflicts with these laws and rulings thereunder. The petition for a writ of certiorari should be granted to correct manifest error on a question of national importance.

Respectfully submitted,

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APPENDIX A

EXPERIMENTAL USE OF SEAT BELTS IN INTERCITY BUSES

A Report
to the
Interstate Commerce Commission
submitted by
The Safety Committee
National Association of Motor Bus Owners*

I. *Introduction*

Following a series of discussions with the staff of the Section of Safety, Bureau of Motor Carriers of the Commission and representatives of the Safety Committee and staff of NAMBO, it was agreed that an attempt would be made to ascertain the extent to which the public would make use of seat belts in intercity coaches and its reaction to their availability. This ICC-NAMBO cooperative experiment was conducted during the period February 17-March 13, 1965 on certain routes and specified schedules operated by Virginia Stage Lines to which seat-belt equipped coaches were assigned. The methodology employed on this project is discussed in § III of this report.

II. *Basic Considerations*

In order properly to consider the data assembled in the course of this experiment, it is essential to set out certain basic factors involved in the use of seat belts in the type of vehicle employed by intercity motor carriers of passengers. This is highly important since this experiment was strictly limited in scope, involving no more than the reaction of the public.

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* This is a report submitted by this Committee and has not been considered or acted upon by the Board of Directors of the Association.

Of prime significance is the fact that there is a vast difference between automobiles and intercity coaches, particularly where they may be involved in collision situations. The desirability of the installation and use of seat belts in automobiles is not questioned here; on the contrary, it is strongly supported. But the widespread campaign to encourage their use runs the risk of fostering an impression on the part of the public that the same principles are applicable to integral-type intercity coaches. There is little or no evidence to support such an assumption and there are, in fact, substantial indications to the contrary.

The experiment conducted by General Motors in which a modern coach was crashed against a concrete wall at 25 miles per hour substantiates the existence of basic differences. For example, this crash produced a maximum seat-belt loop load on the instrumented anthropomorphic dummies of approximately 1,200 pounds; other crash research indicates that the seat-belt load in a passenger car under similar conditions produced a load of 2,700 pounds or more.

The difference here is explained by the fact that, in the case of the bus, very substantial proportions of the kinetic energy* produced by the impact were absorbed by the crushing of the front of the coach to the extent that its total length was reduced by 42 inches. This is a basic engineering principle in integral-type coach design. In this collision, instruments showed a force of 29 G's at the point of impact and 9 G's at seat positions. No comparable result occurs in the case of an automobile.

While it was not possible to instrument the unbelted dummies there are indications that the impact on them may have been, and probably was, no greater than that on the

* The kinetic energy produced here at the 25-mile speed was undoubtedly equal to or considerably greater than that produced by most collisions at greater speeds since collisions seldom involve a square impact on an immovable object which absorbs none of the energy.

belted dummies. This is ascribable to the ability of the seats forward of the dummies to absorb a considerable proportion of the energy without the seats being torn from their mountings.

This, obviously, raises the first important question. Would seat belts on buses have a significant effect in reducing fatalities and injuries if they were available and used by the public? It is feasible to install belts on intercity buses to meet load tolerances required of the airlines, but their need and value is by no means established at this time.

Far more research is required before any conclusions may logically be drawn. The National Safety Council has stated that, other than a preliminary study conducted in Arkansas with school buses, there has been no report of research on the use of seat belts in such vehicles. Further, this experiment was inconclusive because of the use of mannequins rather than anthropomorphic dummies and the fact that they were not instrumented. Other than the General Motors project described above, which was inconclusive in numerous respects, there is nothing available with respect to common-carrier coaches.

Arrangements have been completed with the Institute of Traffic and Engineering Research at the University of California for a study of seat belt installations in school buses. This project, financed by grants from the U. S. Public Health Service and the Allied Chemical Corporation, is to be administered by the National Safety Council and is designed to arrive at sound conclusions with the use of instrumented anthropomorphic dummies in controlled rear-end, side and front collisions and a roll-over test. Highly sophisticated techniques will be used including high-speed photography and automatic recording systems.

It is conceded that there are differences in the design and construction of school buses, particularly the body-on-chassis type, and the typical intercity coach. There are,

however, many similarities and it is the view of the NAMBO Safety Committee that any decision as to the installation of seat belts in common-carrier buses should await the findings in this University of California study.

An analysis of the conclusions drawn from this study will undoubtedly provide guidance and, more importantly, will indicate whether additional experimentation with intercity-type coaches is necessary. Should this additional testing appear desirable, the Committee will recommend to the NAMBO Board of Directors that such a project be undertaken.

This Committee wishes to point out that, so far as this specific issue is concerned, representations made in several quarters with respect to the 1963 accident record of the intercity bus industry tend to be misleading. It is a fact that the 1963 fatality rate did show a sharp reversal of the downward trend of previous years, but the figures for a single year are not indicative of a trend.

Another extremely important fact, almost always overlooked, is that only 52 of the 166 fatalities reported for 1963 by Class I carriers were occupants of buses. Seat belts in buses, assuming they were used, would in no way have prevented those non-passenger fatalities which amount to almost 70 percent of the total. We are advised by Commission staff that data on 1964 passenger fatalities are not yet available. Information has, however, been supplied by Greyhound Lines, Inc. and shows a total of six fatalities on its operations which produces a rate of one such fatality per 1,800,000,000 passenger miles.

The records of the intercity bus industry and NAMBO are replete with evidence of a vital concern for safety. It is the position of this Committee that seat belts should be installed in buses only if: (1) the need therefor is clearly demonstrated; (2) it is established definitely that they would be effective in reducing fatalities and injuries; and (3) there are substantial indications that the public will

use them. At this juncture there is no conclusive evidence on any of these points and it is our view that the financial burden of installing and maintaining belts should not be imposed on the industry unless or until it may be justified. The initial cost to the industry is a matter of five or six million dollars and the limited experience to date indicates that continual maintenance costs occasioned by wear and tear, vandalism and theft are by no means negligible.

III. *Results of the ICC-NAMBO Study*

This investigation was undertaken as a cooperative project of Virginia Stage Lines, the Interstate Commerce Commission and NAMBO. During the period February 17, 1965 to March 13, 1965, buses assigned to routes in the Washington, D. C., Richmond, Danville, Roanoke, Charlottesville and Warrenton, Virginia and Pittsburgh and Philadelphia, Pennsylvania area were equipped with seat belts. On 80 one-way trips in this area the drivers were instructed to make an announcement concerning the availability of seat belts, the text of which is shown on Form ICC-NAMBO SB-3 a copy of which is attached. The passengers on these trips were requested to fill out a card indicating whether or not they used the belt for all or part of the trip and, if not, why not. A copy of this form is also attached. On a total of 41 of the 80 trips; a supervisory employee of Virginia Stage Lines, Safeway Trails, Greyhound or the Interstate Commerce Commission rode as an observer and reported on the use of belts by the passengers, their reaction to their availability and whether the drivers used the belts. Their reports were submitted on Form ICC-NAMBO SB-1.

Trips Ridden by Observers.

The observers reported a total of 732 passengers on the 41 trips and that 311, or slightly more than 2/5, used the belts. The cards filled out by passengers on these same 41 trips indicated that 388 used the belts for all or part of

the trip. The difference between the figure of 388 and 311 is probably explained in part by the fact that a substantial proportion of the passengers used the belts for only part of the trip and may not have had them on at the time the observations were made. According to the reports of the observers, the reaction of the passengers to the seat belts was favorable on 14 trips, unfavorable on 6 and indifferent on 21.

Discussions with the observers revealed an important fact not apparent from the statistical reports. Uniformly they report that substantial numbers of the passengers fastened the belts immediately following the announcements by the drivers but that, shortly thereafter, they were taken off and not replaced.

Passenger Reports.

A total of 933 passenger cards were turned in on the 80 trips. This represents about 60 percent of the estimated total passengers carried. Of these, 665 indicated that the belts were used at some time—459 for all of the trip and 206 for part of the trip. It appears logical to assume—and this is confirmed by discussion with observers—that few if any of the 600 odd passengers who failed to turn in cards used the belts.

These reports therefore indicate that less than half the passengers will use belts at all, even when urged to do so and that about a fourth would wear them during the entire trip. Further, the reports of observers suggest that this latter figure is probably an overstatement. In this connection it must be borne in mind that belts in buses would have to be fastened at all times if they are to perform any useful function and the evidence available indicates that passenger resistance to such a procedure would be very substantial. In the case of air transportation, the need for use of restraining devices is somewhat predictable; this is obviously not so in highway transport.

The passengers who reported that they did not use the belts throw further light on this aspect. Of the 268 passengers who made such reports, 77 gave no reason. Of the remaining 191, the most important single reason (45%) indicated that the belts were uncomfortable. Particularly on longer trips, passengers naturally change their positions relatively frequently and this essential freedom of movement is impossible if seat belts are fastened. Of particular significance is the fact that more than a fourth of the passengers who gave reasons for not using the belts stated that the recognized safety of the bus operations made them unnecessary.

IV. *Summary*

1. The installation of seat belts in intercity coaches is mechanically feasible.

2. The presently available evidence is entirely inconclusive with respect to:

a. Whether such installation would have any appreciable effect on the very low passenger fatality and injury rate.

b. What type of belt or other restraining device, if any is desirable, would be most effective.

c. Whether any substantial proportion of the public would consistently use such devices under any practicable means of stimulation.

3. In the light of the foregoing substantial additional research is essential before any sound conclusions on this matter can be developed.

SUPREME COURT, U. S.

SEP 24 1970

E. ROBERT SEAVER, CLE

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1970

No. 215

GREYHOUND LINES, INC., *Petitioner*

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, in and for the County of Shasta, *Respondent*

MARY CHESEPSKI; EDWARD W. HOLLENBECK; JAMES BRIGGS; ZOLA MAYDEN; GARY L. HENRY, *Real Parties in Interest*

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI to the Court of Appeal of the State of California in and for the Third Appellate District

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PERKINS-WALKER PRINTING CO., SAN FRANCISCO

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to the Court of Appeal of the State of California in and for the Third Appellate District

STATEMENT OF THE CASE

On September 19, 1964, a bus owned and operated by petitioner Greyhound Lines, Inc., collided with a truck in Shasta County, California. Several of the passengers in the bus were injured and filed actions for personal injuries against Greyhound Lines, Inc. The pleadings filed alleged that the failure to provide

suitable safety devices should be treated as negligence. Although it is now September of 1970 the injured persons have been denied an opportunity to litigate their claims at the trial level through no fault of their own.

The materials now on file outline the progress of the case to date, and they show that although there has been extensive activity on the case there is a great deal of work which remains. At present, Greyhound Lines, Inc., has petitioned the Supreme Court of the United States asking that a writ of certiorari issue. In filing this petition it has been stated that the controversy is properly before the Court.

REASONS FOR NOT ALLOWING THE WRIT

The fact that this case is not ripe for a hearing should be sufficient reason for the denial of the petition which has been filed. The case of *Maryland v. Baltimore Radio Show*, 338 U.S. 912; 70 S.Ct. 252; 94 L.Ed. 562 states the clear policy of the Court. Some of the language used in that case is relevant here:

> A variety of considerations underlie denials of the writ, and as to the same petition different reasons may lead different Justices to the same result. This is especially true of petitions for review on writ of certiorari to a State Court. Narrowly technical reasons may lead to denials. Review may be sought too late; the judgment of the lower court may not be final; it may not be the judgment of a State court of last resort; the decision may be supportable as a matter of State

> law, not subject to review by this Court, even though the State court also passed on issues of federal law. A decision may satisfy all these technical requirements and yet may command itself for review to fewer than four members of the Court. Pertinent considerations of judicial policy here come into play. A case may raise an important question but the record may be cloudy. It may be desirable to have different aspects of an issue further illumined by the lower courts. Wise adjudication has its own time for ripening.

The passage quoted above points out the deficiencies of the present situation. The petitioner has not obtained a judgment from the state court of last resort at this time. In fact, there is no final judgment on any of the issues. If a trial record were to be made, the Greyhound company would still have an opportunity to find error and seek redress from the Appellate Courts of the State of California. It is very possible that the matter would be disposed without even reaching the Constitutional question supposedly presented here. Further, as is evident from the petition of Greyhound Lines, Inc., there is a great deal of relevant material which must be considered before a decision can be made. It is submitted that a trial with subsequent challenges for error in the State Courts of Appeal would define and sharpen the issues to be presented and very possibly would dispose of some or all of the problems anticipated by the Petitioner.

The arguments of the Petitioner make it clear that the issues have not been defined at this time. Statements asserting the technical and confusing nature

of the subject matter may not be available to the Petitioner after an actual trial. It is quite possible that the necessary evidence could be presented in such a way that the supposed problems would never arise. Likewise the findings of the trial court may not interfere with some established scheme of regulation, if such a scheme could, in fact, be shown. Very meaningful distinctions, involving possible preemption problems and possible problems concerning the burden on interstate commerce, would have to be made. While it is possible that this Court may have to face this problem again in the future and while it is tempting to ask that the questions presented be settled once and for all, it is clear that it would further delay the already overdue trial proceedings. It is also evident that the case, at this stage of development, is not yet ready for consideration since a great number of the issues could be resolved or at least could be made precise for the Court if the established practice of the Court is followed. It is therefore respectfully submitted that this case should be returned to the trial level and to the system of State Courts until all available avenues for seeking relief have been exhausted.

Dated, Redding, California,
September 22, 1970.

Respectfully submitted,
JACK HALPIN,
Counsel for
Real Parties in Interest.

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Real Parties in Interest

PETITIONER'S REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the Court of Appeal of the State of California in and for the Third Appellate District

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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THERE IS A FINAL JUDGMENT

Respondent's statement that there is no final judgment on any of the issues involved in the petition, is clearly in error. The Court of Appeal of the State

of California, Third Appellate District, decided the constitutional questions presented in this petition on the merits and concluded that: "since we are here unhampered by any controlling federal law or regulation, we conclude that under current California decisional law it is for the jury to decide whether the carrier's failure to provide seat belts amounted to negligence." (Appendix B, xvii.)

Inasmuch as the California Supreme Court denied a petition for hearing, the foregoing pronouncement by the Court of Appeal is the controlling law in the State of California.

Petitioner has no further recourse before the California courts from this judgment which will permit trial court juries throughout the State of California to regulate safety equipment to be installed on interstate motor carriers. The judgment denying petitioner's petition for a writ of prohibition is therefore final and is subject to review by this Court because it is well recognized that:

> ". . . The proceeding for a writ of prohibition is a distinct suit and the judgment finally disposing of it is a final judgment within the meaning of section 237(a) of the Judicial Code."
>
> *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8; 76 L.ed. 136, 141 (1931).

A TRIAL WOULD SERVE NO USEFUL PURPOSE

Respondent's further suggestion that the case should be tried in order to sharpen the issues, is also without merit. The sole question to be decided by this Court is

whether a superior court jury has the jurisdiction to require an interstate motor carrier to equip its buses with passenger restraints when the Department of Transportation has decided that such a requirement is unwarranted. The issue could not be more clearly defined. Since the issue presented is purely a question of law, a trial would serve no useful purpose. This Court is not being asked to determine whether seat belts should or should not be required. This Court is being asked to decide what is the proper agency to make that determination.

The only thing to be gained by a trial would be another two or three years of delay with fruitless appellate proceedings at the State level. During this time, conflicting decisions will doubtless be rendered by other jurisdictions in the fifty States which will serve to only further confuse and frustrate the federal regulatory scheme and burden interstate commerce.

For the reasons stated above, it is respectfully requested that this petition be granted now.

Dated, San Francisco, California,
October 2, 1970.

Respectfully submitted,
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